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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,392	09/24/2003	William A. Rearick	006601-257	4243

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EXAMINER	
EINSMANN, MARGARET V	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/671,392	REARICK ET AL.	
	Examiner	Art Unit	
	Margaret Einsmann	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) *10-21* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *12/22/04, 9/24/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Applicant is advised to update the status of the parent application in the first paragraph of the specification as necessary.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-9, drawn to a process of knitting or weaving a textile article, classified in class 8, subclasses 115.6

II. Claims 10-21, drawn to coating processes, classified in class 427,various subclasses.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions cannot be used together because the are alternative methods of manufacturing a textile article.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

If group II is elected the following election of species will be required:

This application contains claims directed to the following patentably distinct species of the invention claimed in group II: The species of claim 10, the species of claim 15 and the species of claim 20..

If Group II were elected, Applicant I s required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added if group II is elected. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with George A. Hovanec Jr on September 26, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bird view of Blackburn, US 5,190,533.

Bird discloses a knitted sock for active participation sports which will wick, absorb and hold perspiration away from the skin of the wearer to prevent discomfort and chapping. Said sock comprises hydrophobic yarns disposed against and in contact with the skin of the wearer to wick perspiration away from the skin of the wearer and hydrophilic yarns disposed away from the skin of the wearer to absorb and hold the perspiration. The hydrophobic yarns form terry loops on the inside of the sock, which stand out therefrom to provide softness and hand, so that the inside of the sock covering the foot and a portion of the leg is comprised predominately of hydrophobic yarns to contact the skin of the wearer for wicking perspiration away from the skin of the wearer. (col 1 lines 40-col 2 line 15.). Thus the inside of the sock is more hydrophobic than the outside, the terry loops forming a discontinuous hydrophobicity, wherein channels of hydrophilic fibers of the outside yarn wick the liquid to the outside surface of the fabric. Bird teaches that the outside of the sock is comprised predominately of hydrophilic yarns and the inside is composed of predominately hydrophobic yarn. Bird teaches that the inside hydrophobic fibers may be selected from any suitable hydrophobic yarn (col 3 first paragraph) Bird does teach several yarns as examples of the hydrophobic fiber, but does not specifically include hydrophobically treated cellulose as claimed.

Blackburn teaches at col 7 lines 21 et seq. that cotton or rayon made from fibers having a hydrophobic finish are desirable for use as stay-dry fibers because the finishes give the fabrics their stay-dry properties, that is, fluid passes through the fabric and does not come back through the fabric thus making the fabric dry to touch. Accordingly

these fibers are eminently suitable as the hydrophobic fiber in Bird's sock. An additional property of said fibers is that the fibers are biodegradable while hydrophobic polymer fibers such as polyester and polypropylene resist degradation. Regarding the percentages of hydrophobic and hydrophilic yarns as claimed in claims 3-6, Bird's teaching of predominately hydrophobic on the inside and predominately hydrophilic on the outside is inclusive of the percentages as claimed.

It would have been obvious to the man having skill in the art at the time the invention was made to use the hydrophobically modified fibers disclosed in Blackburn for the hydrophobic fibers in Bird's sock because Blackburn teaches that the hydrophobically modified cotton is readily biodegradable and yet serves the same function of wicking moisture away from the wearer as does the hydrophobic fibers of Bird.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-W and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Margaret Einsmann/

September 27, 2005

Margaret Einsmann
Primary Examiner
Art Unit 1751